TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 207.

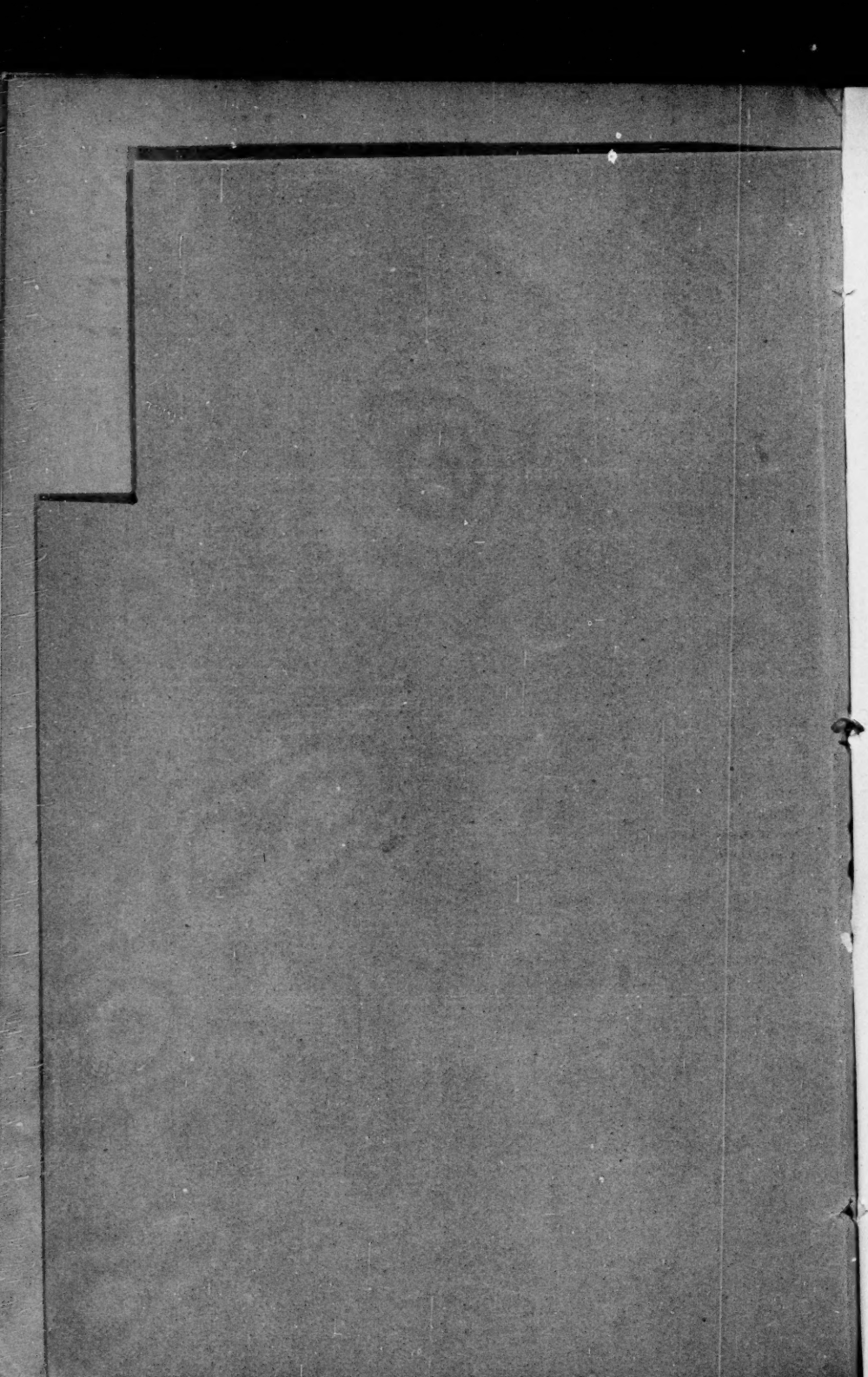
NANNIE H. BLAIR AND WALTER D. BLAIR, CHARLES J. BLAIR, FANNIE BLAIR, AND WILLIAM A. BLAIR, BY NANNIE H. BLAIR, THEIR GUARDIAN AND NEXT FRIEND, PLAINTIFFS IN ERROR,

vs.

FRANKLIN D. GRAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 5, 1879.



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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the judges thereof on Thursday the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and third year.

WILLIAM H. BRADLEY, *Clerk.*

NANNIE H. BLAIR AND WALTER D. BLAIR, Charles J. Blair, Fannie Blair and William A. Blair, by Namie H. Blair, their guardian and next friend,
v.
FRANKLIN D. GRAY. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

Be it remembered that on the 19th day of February, A. D. 1878, came the said plaintiffs, by E. A. Otis, their attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, their bond for costs and præcipe for a writ of summons against said defend-
2 ant in said entitled cause, which said bond and præcipe are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, March term, A. D. 1878.

NANNIE H. BLAIR AND WALTER D. BLAIR, Charles J. Blair et al.,
v.
FRANKLIN D. GRAY.

I hereby enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them. Dated this 19th day of February, A. D. 1878.

E. A. OTIS.

(Endorsed:) Filed Feb. 19, A. D. 1878. Wm. H. Bradley, clerk.

Præcipe.

United States circuit court, northern dist. Ill.

NANNIE H. BLAIR AND WALLER D.
3 Blair, Charles J. Blair, Fannie Blair, and William A. Blair, by Nannie H. Blair, their guardian and next friend,
v.
FRANKLIN D. GRAY.

The clerk of the above court will issue a summons in the above-

entitled cause against the said defendant in an action of assumpsit—damages six thousand dollars, returnable to the March term of court.
February 18th, 1878.

E. A. OTIS,
Plaintiffs' Attorney.

(Endorsed:) Filed Feb. 19, 1878. Wm. H. Bradley, clerk.

And on the same day, to wit, the 19th day of February, A. D. 1878, a writ of summons issued out of said clerk's office against said defendant in said entitled cause; which said writ, with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, ss.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Franklin D. Gray, if found in your district, to be and appear before our judges of our circuit court
4 of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto Nannie H. Blair & Walter D. Blair, Charles J. Blair, Fannie Blair, and William A. Blair, by Nannie H. Blair, their guardian and next friend, of a plea of trespass on the case upon promises, to their damage, as it is alleged, of six thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 19th day of February, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I have served the within writ by reading the same to and within the presence and hearing of Franklin D. Gray therein named on the 19th day of February, 1878.

J. S. HILDRUP,
U. S. Marshal,
By D. D. SABIN,
Deputy.

(Endorsed:) Filed Feb. 22, A. D. 1878. Wm. H. Bradley, clerk.

5 Afterwards, to wit, on the 22d day of February, A. D. 1878, said plaintiffs, by their attorney, filed in said clerk's office their declaration in said-entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

In the United States circuit court, northern district of Illinois.

NORTHERN DISTRICT OF ILLINOIS, *ss:*
Nannie H. Blair and Walter D. Blair, Charles J. Blair, Fannie Blair,

and William A. Blair, by Nannie H. Blair, their guardian and next friend, each and all of whom are citizens of the State of Georgia, plaintiffs in this suit, by E. A. Otis, their attorney, complain of Franklin D. Gray, who is a citizen of the State of Illinois, defendant in this suit, who has been summoned to answer the said plaintiffs in a plea of trespass on the case upon promises.

For that whereas heretofore, to wit, on or about the 1st day of January, A. D. 1870, and before that time, the Republic Life Insurance Company, of Chicago, became and was duly incorporated under and by virtue of an act of the general assembly of the State of Illinois, approved March 27th, A. D. 1869, entitled "An act to incorporate the Republic Life Insurance Company, of Chicago," to wit, at the district aforesaid; that thereafterwards, to wit, on the 30th day of September, A. D. 1871, at the district aforesaid, the said Republic Life Insurance Company, of Chicago, in pursuance of the power
6 vested in it by its said charter, and in the exercise thereof, did issue its policy of insurance No. 3138, whereby substantially in consideration of a certain premium paid to it, did promise to pay, ninety days after satisfactory evidence of death, during the continuance of said policy, of William J. Blair, of Augusta, Georgia, to the plaintiff, Nannie H. Blair, and to his children, or the legal holder thereof, the sum of five thousand dollars, which policy of insurance is therein stated to be on certain conditions therein written, among others, that a certain annual premium should be paid to the said Republic Life Insurance Company, of Chicago, during the first eight years of the life of the said William J. Blair thereafterwards; that all the answers, declarations, and representations were true; that the assured should not, without consent of said company, reside or travel outside of certain limits, or engage in certain prohibited employments, and that violation of said conditions, or death in consequence of violation of law, intemperance, or self-destruction should render the policy void, subject to certain reservations, and that the assured might, under certain restrictions, surrender said policy and receive in lieu thereof one paid in full for a smaller sum; that thereafterwards the said policy of insurance was continued in force by the payment of annual premiums therein specified until heretofore, to wit, on the 30th day of December, A. D. 1876, while the said policy of insurance was in full force and ef-
7 fect, the said William J. Blair died; that the cause of his said death was not within any of the exceptions named in the conditions of said policy of insurance, nor had he ever violated any of the said conditions or agreements; that thereupon immediate notice was given and due proofs furnished of the death of the said assured William J. Blair to the said Republic Life Insurance Company of Chicago, which were by it received and accepted as satisfactory, and the said claim was adjusted and settled, and that more than ninety days have elapsed since such satisfactory evidence of the death of the said assured under said policy was made; and the plaintiffs aver that the said plaintiff, Nannie H. Blair is the widow, and that the said Walter D. Blair, Charles J. Blair, Fannie Blair, and William A. Blair are the sole and only children of the said William J. Blair, whose life, for their benefit, was so insured in said policy; that by reason and on account of the said issuance of the said policy of insurance, and the said death of the said William J. Blair, the said assured, during the continuance and while the said policy of insurance was in full force, and of the satisfactory evidence thereof, and the adjustment and settlement of said loss, and by means of all the matters aforesaid, the said Republic Life Insurance Com-

pany, of Chicago, became and was justly indebted to the said plaintiffs in the full sum of five thousand dollars, and being so indebted, the said
8 Republic Life Insurance Company of Chicago, in consideration thereof, afterwards, to wit, on the 1st day of May, A. D. 1877, at Chicago, to wit, in the district aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto them the said sum of money when it should be thereunto afterwards requested; yet the said Republic Insurance Company of Chicago, not regarding its said promises and undertaking in that behalf, and although often requested so to do, has not paid to the said plaintiffs the said sum of money last aforesaid, or any part thereof, but so to do has hitherto wholly neglected and refused, and still doth neglect and refuse.

And the said plaintiffs aver that the whole amount of the capital stock of said corporation, The Republic Life Insurance Company of Chicago, has never been paid in, but on the contrary thereof a large portion of such capital stock still remains due and wholly unpaid, and the said plaintiffs aver that the said defendant heretofore, to wit, on or about the 1st day of May, A. D. 1871, to wit, at the district aforesaid, subscribed to the capital stock of said corporation, and became, and was a stockholder in said corporation to the extent amount of, to wit, one hundred shares of the capital stock of said corporation of the par value of one hundred dollars per share, amounting in all to the sum of, to wit, ten thousand dollars of the capital stock of said corpora-
9 tion; and the plaintiffs aver that the said defendant has only paid to the said corporation, the said Republic Life Insurance Company of Chicago, or for its use and in its behalf the sum of two thousand dollars; that there is still due and wholly unpaid from the said defendant to the said Republic Life Insurance Company of Chicago, the sum of eight thousand dollars on account of the one hundred shares of stock so subscribed for and owned and held by said defendant, and which remains wholly unpaid. By means whereof, and by force of the statute in such case, made and provided the said defendant became liable to pay the said plaintiff the said sum of money last above mentioned, and being so liable the said defendant, in consideration thereof, then and there undertook and promised the said plaintiff's to pay the said plaintiffs, to wit, the said sum of money last above mentioned, being the remainder of the par value of the said defendant's capital stock held by him in said company as aforesaid when thereunto requested.

Yet the said defendant, not regarding his said promises, but contriving and, although often requested so to do, has not paid the said plaintiffs said sum of money last above mentioned or any part thereof, but so to do, has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the plaintiffs of six thousand
10 dollars, and thereupon they, the said plaintiffs, bring this suit, &c.

And for that whereas heretofore, to wit, on or about the 1st day of January, A. D. 1870, and before that time The Republic Life Insurance Company of Chicago became and was duly incorporated under and by virtue of an act of the general assembly of the State of Illinois, approved March 27th, A. D. 1869, to wit, at the district aforesaid; that thereafterwards, to wit, on the 1st day of May, A. D. 1877, at the district aforesaid, the said Republic Life Insurance Company of Chicago became and was indebted to the plaintiffs on account of a certain other policy of insurance No. 3138, which was duly issued by said company upon the life of William J. Blair, whereby the said Republic Life In-

surance Company of Chicago, in consideration of a certain promise, promised to pay to the plaintiffs, ninety days after satisfactory evidence of the death of said William J. Blair, the sum of five thousand dollars; that the said William J. Blair died on the 30th day of December while said policy was in full force and effect; that due notice within the time prescribed by the terms of said policy was issued to said company, and that said satisfactory evidence of such death of said William J. Blair was duly received by said company, and the claim of the plaintiff under said policy was by it duly adjusted, liquidated, and settled, and
11 it was duly admitted by said company, at the time of said adjustment that there was due by it to the said plaintiffs the full sum of five thousand dollars. By means whereof, and of the settlement and adjustment as aforesaid, the said Republic Life Insurance Company of Chicago became and was indebted to the plaintiffs in the full sum of five thousand dollars, and being so indebted the said Republic Life Insurance Company of Chicago in consideration thereof afterwards, to wit, and on the 1st day of May, A. D. 1877, at Chicago, to wit, in the district aforesaid undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto them the said sum of money when it should be thereunto afterwards requested, yet the said Republic Life Insurance Company of Chicago not regarding its said promises, and undertaking in that behalf, and, although often requested so to do, has not paid to the said plaintiffs the said sum of money last aforesaid or any part thereof, but so to do has hitherto wholly neglected and refused and still doth neglect and refuse.

And the said plaintiffs aver that the whole amount of the capital stock of said corporation, the Republic Life Insurance Company of Chicago, has never been paid in, but on the contrary thereof a large portion of such capital stock still remains due and wholly unpaid, and the said plaintiffs aver that the said defendant heretofore, to wit, on or about the 1st day of May, A. D. 1870, to wit, at the district
12 aforesaid subscribed to the capital stock of said corporation and became and was a stockholder in said corporation to the extent and amount of, to wit, one hundred other shares of the capital stock of said corporation of the par value of one hundred dollars per share, amounting in all to the sum of, to wit, ten thousand dollars of the capital stock of said corporation. And the plaintiffs aver that the said defendant has only paid to the said corporation, the said Republic Life Insurance Company of Chicago, or for its use and in its behalf the sum of two thousand dollars; that there is still due and wholly unpaid, from the defendant to the said Republic Life Insurance Company of Chicago, the sum of eight thousand dollars on account of the one hundred shares of stock so subscribed for and owned and held by said defendant, and which remains wholly unpaid. By means whereof, and by force of the statute in such case, made provided and the terms and conditions of said act of incorporation the said defendant became liable to pay the said plaintiffs the said sum of money last above mentioned, and being so liable the said defendant in consideration thereof, then and there undertook and promised the said plaintiffs to pay the said plaintiffs, to wit, the said sum of money last above mentioned, being the remainder of the par value of the said defendants' capital stock held by him in said company as aforesaid when thereunto re-
13 quested. Yet the said defendant, not regarding his said promises, but contriving, and, although often requested so to do, has not paid the said plaintiffs said sum of money last above mentioned or any part thereof, but so to do has hitherto wholly neglected and re-

fused, and still doth neglect and refuse, to the damage of the plaintiffs of six thousand dollars, and thereupon they, the said plaintiffs, bring this suit, &c.

And for that whereas, heretofore, to wit, on or about the 1st day of January, A. D. 1870, and before that time, the Republic Life Insurance Company of Chicago became and was duly incorporated under and by virtue of an act of the general assembly of the State of Illinois, approved March 27th, A. D. 1869, to wit, at the district aforesaid; that thereafterwards, to wit on the 30th day of September, A. D. 1871, at the district aforesaid, the said Republic Life Insurance Company of Chicago, in pursuance of the power vested in it by its said charter, and in the exercise thereof, did issue its certain other policy of insurance No. 3138, which policy was in the words, letters, and figures, as follows, to wit:

"The Republic Life Insurance Company," central office, Chicago Illinois, at its office, ninety days after satisfactory evidence of the death, during the continuance of this policy, of William J. Blair, a com-
14 mission merchant of Augusta, Georgia, will pay to Nannie H. Blair, his wife, and his children, or to the legal holder of this policy, five thousand dollars. In witness whereof, the Republic Life Insurance Company of Chicago, Illinois, has, by its president and secretary, signed and delivered this contract this thirtieth day of September, 1871, in lieu of De Soto policy No. 741, dated Sept. 28th, 1871, subject to the conditions and agreements within specified.

{ REPUBLIC LIFE INSURANCE COMPANY, OF CHICAGO. L. S. } JOHN V. FARWELL, *President.*

ORRIN E. MOORE, *Secretary:*

This policy of insurance is issued and accepted on the following express conditions and agreements.

First. That the answers, statements, declarations, and representations contained in the application for this policy, which forms a part of this contract are warranted to be true, and agreed to be material.

Second. That there shall be paid to this company on delivery of this policy, and on or before the first day of October in every year during the first eight years of the life of the insured the annual premium in advance of two hundred and thirty-eight dollars and twenty-five cents. If payment is made semi-annually or quarterly, any unpaid balance of the annual premium will be deducted from this at maturity.

15 Third. That the said life insured shall not, without the written consent of this company, travel or reside outside the inhabited portions of the United States, Dominion of Canada, or Europe, or be employed in the manufacture of gunpowder or other explosive substances, or as a miner, submarine operator, sailor, soldier, or engineer of a steam-engine, or on the trains of a railroad, or on a steamer.

Fourth. That in case of the failure or violation of any of the foregoing conditions, or of death in consequence of the violation of law, or intemperance, self-destruction, voluntary or otherwise, then this policy shall be null and void except that in case of death from either of these three causes, the company shall pay the net value of the policy at the time of death, computed by The American Experience, and six per cent. interest.

Fifth. That if after date this policy shall be surrendered while in force, or within thirty days thereafter, this company will issue a full

paid policy for the amount endorsed thereon, provided that no condition of this policy has been violated.

The amount of paid-up policy payable at death which will be granted on surrender of this policy (as per conditions within)—

Will be after date					1,000
1 year payment of premium					1,500
2 years	"	"			2,000
3	"	"	"		2,500
16 4	"	"	"		3,000
5	"	"	"		3,500
6 "	"	"			4,000
7 "	"	"			4,500
8 "	"	"			5,000
9 "	"	"			
10 "	"	"			

That thereafterwards the said policy was continued in full force by the payment of annual premiums therein specified until heretofore, to wit, on the 30th day of December, A. D. 1876, while the said policy of insurance was in full force and effect, the said William J. Blair died; that the cause of his said death was not within any of the exceptions named in the conditions of said policy of insurance, nor had he ever violated any of the said conditions or agreements; that thereupon notice was given and due proofs furnished of the death of said assured William J. Blair to the said Republic Life Insurance Company at Chicago, which were by it received and accepted as satisfactory, and the said claim was adjusted and settled; that more than ninety days hath elapsed since such satisfactory evidence of the death of the said assured under said policy was made; that by reason and on account of the said issuance of the said policy of insurance, and the said death of the said William J. Blair, the said assured, during the con-
17 tinuance and while the said policy of insurance was in full force and of the satisfactory evidence thereof, and the adjustment and settlement of said loss, and by means of all the matters aforesaid, the said Republic Life Insurance Company of Chicago became and was justly indebted to the said plaintiffs in the full sum of five thousand dollars, and being so indebted the said Republic Life Insurance Company of Chicago, in consideration thereof, afterwards, to wit, on the 1st day of May, A. D. 1877, at Chicago, to wit, in the district aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto them the said sum of money when it should be thereunto afterwards requested. Yet the said Republic Life Insurance Company of Chicago, not regarding its said promises and undertaking in that behalf, and although often requested so to do, has not paid to the said plaintiffs the said sum of money last aforesaid, but so to do has hitherto wholly neglected and refused, and still doth neglect and refuse.

And the said plaintiffs aver that the whole amount of the capital stock of said corporation, the Republic Life Insurance Company of Chicago, has never been paid in, but, on the contrary thereof, a
18 large portion of such capital stock still remains due and wholly unpaid, and the said plaintiffs aver that the said defendant heretofore, to wit, on or about the 1st day of May, A. D. 1871, to wit, at the district aforesaid, subscribed to the capital stock of said corporation, and became and was a stockholder in said corporation to the extent amount of, to wit, one hundred other shares of the capital stock of said

corporation, of the par value of one hundred dollars per share, amounting in all to the sum of, to wit, ten thousand dollars of the capital stock of said corporation, and the plaintiffs aver that the said defendant has only paid to the said corporation, the said Republic Life Insurance Company of Chicago, or for its use and in its behalf, the sum of two thousand dollars; that there is still due and wholly unpaid from the defendant to the said Republic Life Insurance Company of Chicago the sum of eight thousand dollars, on account of the one hundred shares of stock so subscribed for and owned and held by said defendant, and which remains wholly unpaid. By means whereof and by force of the statute in such case made and provided, and the terms and conditions of said act of incorporation, the said defendant became liable to pay the said plaintiffs the said sum of money last above mentioned,
19 and being so liable the said defendant, in consideration thereof, then and there undertook and promised the said plaintiffs to pay the said plaintiffs, to wit, the said sum of money last above mentioned, being the remainder of the par value of the said defendants' capital stock held by him in said company, as aforesaid, when thereunto requested. Yet the said defendant, not regarding his said promises, but contriving, and although often requested so to do, has not paid the said plaintiffs said sum of money last above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the plaintiffs of six thousand dollars, and thereupon they the said plaintiffs bring this suit, &c.

E. A. OTIS,
Plaintiffs' Attorney.

(Endorsed:) Filed Feb. 22, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 6th day of March, A. D. 1878, said defendant, by his attorney, filed in said clerk's office his demurrer to the declaration of said plaintiff in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer.

20 In the circuit court of the United States for the northern district of Illinois, of the March term, A. D. 1878.

FRANKLIN D. GRAY, DEFENDANT,
ads.
NANNIE H. BLAIR ET AL., PLAINTIFFS.

And the said defendant, by F. H. Kales, his attorney, comes and defends the wrong and injury when, etc., and says that the several counts of the said declaration, each and every of them, and the matters and things therein severally contained in manner and form as the same are therein severally above pleaded and set forth, are not sufficient in law, nor are either of the said counts of the said declaration sufficient in law for the said plaintiffs in that behalf respectively to have and maintain their aforesaid action thereof against him, the said defendant, and that he, the said defendant, is not bound by the law to answer the said counts or either of them, and this he, the said defendant, is ready to verify. Wherefore, by reason of the insufficiency of each of the said counts respectively in the said declaration contained, the said defendant in that behalf prays judgment, and that the said plaintiffs may be

barred from having or maintaining their aforesaid action thereof against him, etc.

F. H. KALES,
Def't's Att'y.

CHARLES HITCHCOCK,
Of Counsel.

21 (Endorsed:) Filed M'ch 6, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 23rd day of May, A. D. 1878, in the adjourned May term of said court, in the record of the proceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

NANNIE H. BLAIR ET AL. *v.* FRANKLIN D. GRAY. } Assumpsit.

Now come the parties, by their attorneys, and now comes on to be heard the demurrer of the defendant to the declaration herein; and after hearing the arguments of counsel the court takes the same under advisement.

Afterwards, to wit, on the 24th day of October, A. D. 1878, in the adjourned October term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

NANNIE H. BLAIR AND WALKER D. BLAIR, Charles J. Blair, Fannie Blair, and William A. Blair, by Nannie H. Blair, their guardian and next friend, *v.* FRANKLIN D. GRAY. } Assumpsit.

22 Now come the parties, by their attorneys, and the court having considered and being now sufficiently advised upon the demurrer of the defendant to the declaration herein, sustains said demurrer, and the plaintiffs, by their attorney, electing to stand by their said demurrer the court enters judgment thereon, and orders that this cause be dismissed at the costs of the plaintiff.

It is thereupon considered and adjudged by the court that the defendant do have and recover of the plaintiffs his costs and charges about his defence in this behalf expended, amounting to the sum of thirteen dollars and sixty cents, and that he have execution therefor.

And afterwards, to wit, on the 3rd day of April, A. D. 1879, said plaintiffs, by their attorney, filed in said clerk's office their bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Nannie H. Blair, of Augusta, Georgia, and E. A. Otis, of Chicago, Illinois, are held and firmly bound unto Franklin D. Gray, and his heirs and assigns, in the penal

sum of five hundred dollars, for the payment of which, well and
23 truly to be made, we bind ourselves, jointly and severally, firmly by these presents. Witness our hands and seals this 17th day of March, A. D. 1879.

The condition of the above obligation is such that, whereas the above bounden Nannie H. Blair and Walter D. Blair, Charles J. Blair, Fannie Blair, and William A. Blair, by said Nannie H. Blair, guardian and next friend, have prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment heretofore and on the 24th day of October, A. D. 1878, rendered against them in the circuit court of the United States for the northern district of Illinois in favor of said Franklin D. Gray, defendant, dismissing said suit with costs.

Now, therefore, if the said Nannie H. Blair and Walter D. Blair, Charles J. Blair, Fannie Blair, and William A. Blair, by said Nannie H. Blair, guardian and next friend, shall prosecute their said writ of error to effect, and shall answer and make good all costs if they fail to make good their plea, then this obligation shall be void; otherwise the same shall be in full force and effect.

NANNIE H. BLAIR. [SEAL.]
By E. A. OTIS,
Her Attorney in fact.
E. A. OTIS. [SEAL.]

24 Know all men by these presents that I, Nannie H. Blair, of Augusta, Georgia, have made, constituted, and appointed, and by these presents do make, constitute, and appoint E. A. Otis, of Chicago, my true and lawful attorney, for me and in my name, place, and stead, to sign, execute, acknowledge, and deliver all necessary bonds of every description which may be required in connection with the prosecution of a writ of error to the Supreme Court of the United States from the judgment of the circuit court of the United States for the northern district of Iilinois, in a suit there lately pending, where I, said Nannie H. Blair, and others were plaintiffs, and one Franklin D. Gray was defendant, in favor of said defendant, giving and granting unto my said attorney full power and authority to do every act and thing in and about the premises requisite and necessary to be done that I could do if personally present, hereby ratifying all that my said attorney may lawfully do by virtue hereof.

In witness whereof I have hereto set my hand and seal this 13th day of March, A. D. 1879.

NANNIE H. BLAIR. [SEAL.]

STATE OF GEORGIA,
Richmond County, ss:

On this 13th day of March, A. D. 1879, personally came before
25 me Nannie H. Blair, the signer and sealer of the foregoing power of attorney, and acknowledged the execution thereof, for the uses and purposes therein expressed.

Witness my hand and official seal the day and year aforesaid.

[SEAL.] J. A. BELL,
Not. Pub., R. Co., Ga.

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed April 3d, 1879. Wm. H. Bradley, cl'k.

26 NORTHERN DISTRICT OF ILLINOIS, *sct:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a correct and complete transcript of the record of the proceedings had in said court in the cause wherein Nannie H. Blair et al. are the plaintiffs, and Franklin D. Gray is the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this tenth day of May, A. D. 1879, and of our Independence the one hundred and third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

27 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is before you in said circuit court between Nannie H. Blair & Walter D. Blair, Charles J. Blair, Fannie Blair, and William A. Blair, by Nannie H. Blair, their guardian and next friend, plaintiffs, and Franklin D. Gray, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Nannie H. Blair, Walter D. Blair, Charles J. Blair, Fannie Blair, and William A. Blair, by Nannie H. Blair, their guardian and next friend, as by their complaint appears; and it *is* being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October, A. D. 1879, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this second day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 103rd year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. Nannie H. Blair et al., &c., vs. Franklin D. Gray. Writ of error.

28 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Franklin D. Gray, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1879, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Nannie H. Blair et al. are plaint-

iffs in error, and you are defendant in error, to show cause, if any there be, why the error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this tenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

H. W. BLODGETT, *Judge.*

29 (Indorsed:) Supreme Court of the United States. Nannie H. Blair et al. vs. Franklin D. Gray. Citation to October term, A. D. 1879.

I hereby admit due service of the within citation this 14th April, A. D. 1879.

FRANCIS H. KALES,
Att'y for Def't in Error.

(Indorsement on cover:) No. 207. Nannie H. Blair & Walter D. Blair, Charles J. Blair, Fannie Blair & William A. Blair, by Nannie H. Blair, their guardian and next friend, plaintiffs in error, vs. Franklin D. Gray. N. Illinois C. C. U. S. Filed 5th July, 1877.

Depos Exhibit 9 11/25/79
Jw Chaney.

The St Louis Smelting and Refining Company's
ADDITION
to the
City of Leadville.

The St Louis Smelting and refining company a corporation organized under the laws of the State of Missouri hereby certifies that it has caused to be surveyed and laid off into lots, blocks, Streets and Alleys, the following described Real Estate being a sub division of the "Thomas Starr" placer claim designated as U.S. Survey No 255 Beginning at corner No1 which is the same as corner No 83 of approved survey No 255, which bears from U.S. Locating monument No1 set by J. L. Tidcomb U.S. Deputy mineral surveyor N 50° 38' E 1070 feet, thence S 16° 26' E 500 ft to corner No 2, thence N 74° 27' E 1423 feet to corner No 3. Thence S 15° 23' E 285 feet to corner No 4 Thence S 86° 36' E 575 feet to corner No 5. Thence N 81° 53' E 687 feet to corner No 6 Thence N 78° 45' E 241 feet to corner No 7, Thence N 3° W 89 feet to corner No 8, Thence N 16° 26 W 137 feet to corner No 9, Thence N 38° 5' E 67 feet to corner No 10. Thence N 6° 30' W 659 feet to corner No 11, Thence N 27° 40' E 354 feet to corner No 12 Thence N 29° 40' W. 28 feet to corner No 13, Thence S 73° 40' W 1413 feet to the place of beginning which said lots, blocks, streets and alleys so surveyed and laid off are marked and designated on the annexed plat and to be known as the St. Louis Smelting and Refining Company's addition to the City of Leadville, and the said Company hereby dedicates and conveys to said city as public property the Streets and alleys so as aforesaid laid off marked and designated as such in said plat. In witness whereof the St. Louis Smelting and Refining Company aforesaid has executed this instrument by John B. Maude, its attorney in fact this 18th day of April A.D. 1879.

The Saint Louis Smelting and Refining Co
by Jno. B. Maude, its attorney in fact. (Seal)

State of Colorado } ss. I Joseph H. Wells, Clerk and Recorder in and for said
County of Lake } County do hereby certify that the above and foregoing is a true and correct copy of the plat of the St. Louis Smelting and Refining Company's addition to the city of Leadville, as filed in my office on April 18th A.D. 1879, at 3 P.M. and now remains on file in my office.
Witness my hand and official seal this 16th day of May A.D. 1879
Jos H. Wells, Recorder

(Seal of Lake county State of Colorado)

Filed in my Office April 18th A.D. 1879 at 3 P.M.
Jos H. Wells,
Recorder

State of Colorado } ss. I Daniel Sayers a Notary Public in and for said County in the State aforesaid do hereby certify that
County of Lake } John B. Maude, who is personally known to me to be the person who subscribed the name of the St. Louis Smelting and Refining Company to the foregoing instrument of writing as its attorney in fact appeared before me this day in person, and acknowledged that he signed, sealed and delivered the same as the free and voluntary act of said St. Louis Smelting and Refining Company for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 18th day of April A.D. 1879.

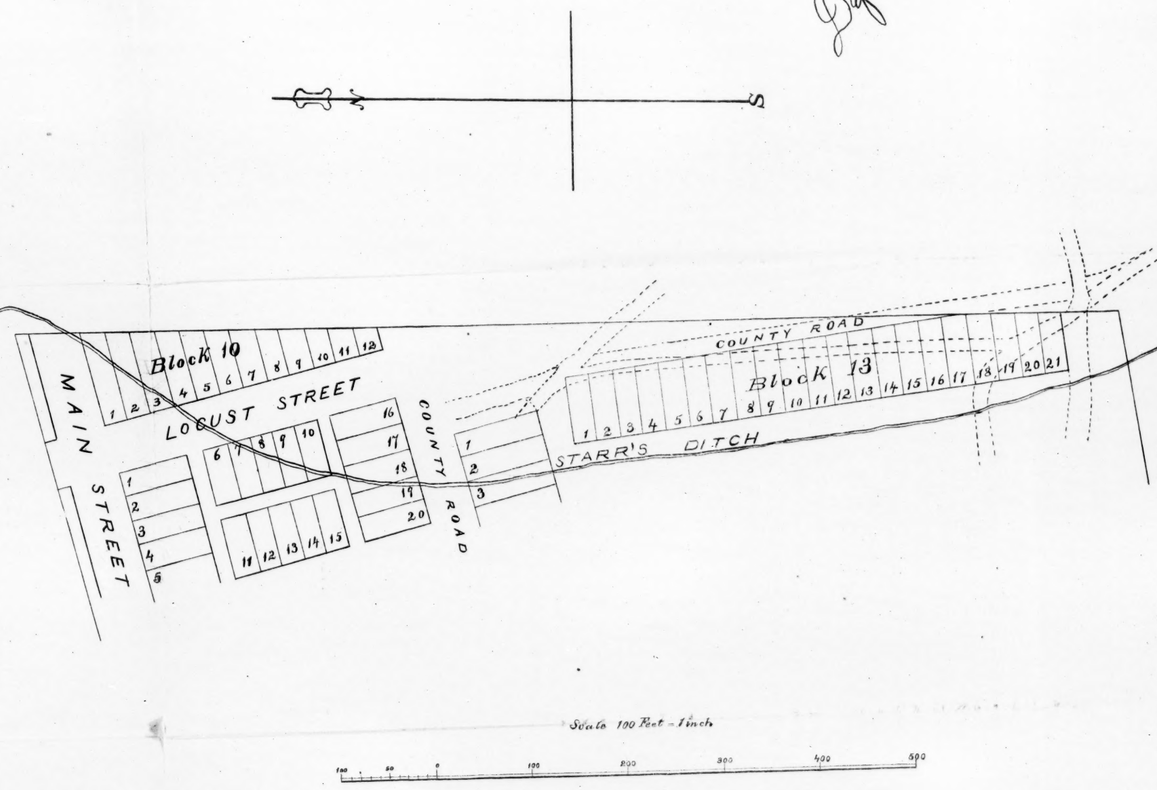
Daniel Sayers
Notary Public.

(Notarial Seal)

No. 5106

The St Louis Smelting and Refining Company's Second addition to the City of Leadville

Defts. Exhibit 10
11/26/79
J W Christy
Stenog



State of Colorado } ss
County of Lake }

Filed for record in my Office
July 1st A.D. 1879 at 6 o'clock P.M
Jos H. Wells. Clerk & Recorder
E J Wolverton Deputy

The St Louis Smelting and Refining Company, a corporation organized under the laws of the State of Missouri hereby certifies that it is the owner of the following described Real Estate, to be surveyed and laid off into Lots, Blocks, Streets and alleys, to be known as the "Second Addition to the City of Leadville," and that the following described Real Estate, being a subdivision of the "Herman Placer claim, designated as U.S. Survey No 2555, being a certain piece of ground situated in the City of Leadville, Lake County, Colorado, and bounded and described as follows, to wit: Beginning at corner No 1, being also corner No 7 of the Starr & Meyer placer claim and No 3 of the Herman Placer claim, and running thence N 73° W fifty nine (59) feet to corner No 2, being also corner No 6 of said Starr & Meyer claim and No 4 of the Herman claim; thence S 27° 40' W along the line between Nos 6 & 7 of said Starr & Meyer claim and Nos 3 & 4 of said Herman claim one hundred and thirty seven (137) feet to corner No 3, thence N 73° W fifty nine (59) feet to corner No 4, being also corner No 5 of said Starr & Meyer claim and No 2 of said Herman claim; thence S 27° 40' W along the line between Nos 5 & 6 of said Starr & Meyer claim and Nos 2 & 1 of said Herman claim one hundred and fifty two (152) feet to corner No 5, thence S 16° 50' W six hundred and fifty nine (659) feet to corner No 6, thence S 2° 45' E along the line between Nos 6 & 7 of said Starr & Meyer claim one hundred and eighty eight (188) feet to corner No 7, thence S 16° 50' W one hundred and thirty two (132) feet to corner No 8, thence S 73° E fifty nine (59) feet to corner No 9, thence N 16° 50' E one hundred and eighty eight (188) feet to corner No 10, thence S 73° E fifty nine (59) feet to corner No 11, thence N 16° 50' E one hundred and thirty two (132) feet to the place of beginning, which said tract of ground is designated on the annexed plat and is known as the "St Louis Smelting and Refining Company Lode" and is claimed by the said Company, and the said Company hereby dedicates to the City of Leadville and the public forever, as and for streets, alleys and public grounds, all such portions of the said tract of ground as are designated on the annexed plat as streets, alleys and public grounds, and hereby releases and quit claims to the City of Leadville and the public forever all such portions of the said tract of ground as are designated on the annexed plat as streets, alleys and public grounds. In witness whereof the St Louis Smelting and Refining Company has caused its corporate seal to be hereunto affixed and these presents to be executed by its President and Secretary this 30th day of June A.D. 1879.

St Louis Smelting & Refining Company
By J. R. Lokey, its attorney in fact

State of Colorado } ss
Lake County }

Daniel Sayer a notary Public in and for said County do hereby certify that J. R. Lokey who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as its attorney in fact appeared before me this day in person and acknowledged that he executed the same as the free and voluntary act of said St Louis Smelting and Refining Company, as its attorney in fact, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30 day of June 1879.

Daniel Sayer
Notary Public

(L.S.)

State of Colorado } ss
County of Lake }

I Jos. H. Wells, Clerk and Recorder in and for said county in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of the St. Louis Smelting and Refining company's Second Addition to the city of Leadville, as appears of record in my Office.
Witness my hand and official seal this the 21st day of Nov. A.D. 1879.
Jos. H. Wells, Clerk & Recorder
E. J. Wolverton, Deputy

Seal of Lake County State of Colorado

No. 193
Heald
v.
Rice
page 841.

H. W. RICE.

Steam Boilers.

No. 146,614.

Patented Jan. 20, 1874.

Fig. 1.

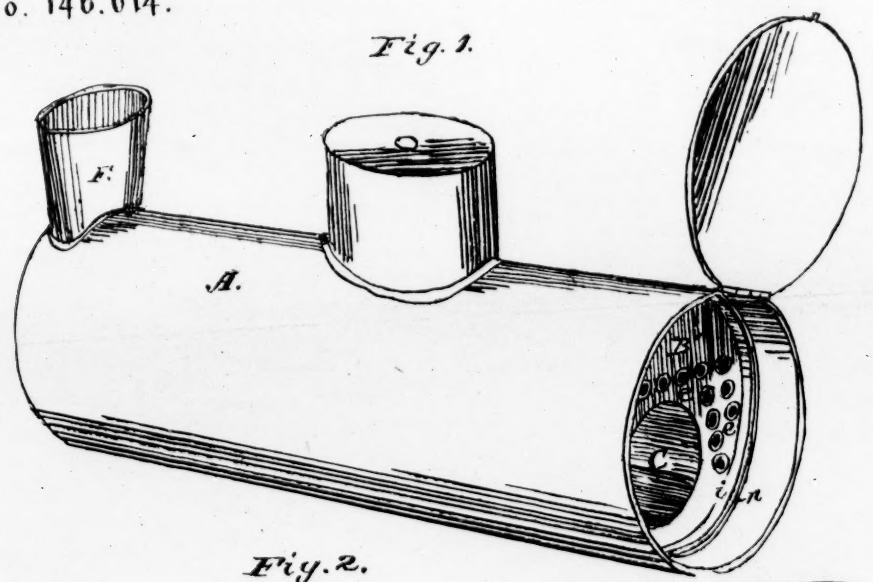


Fig. 2.

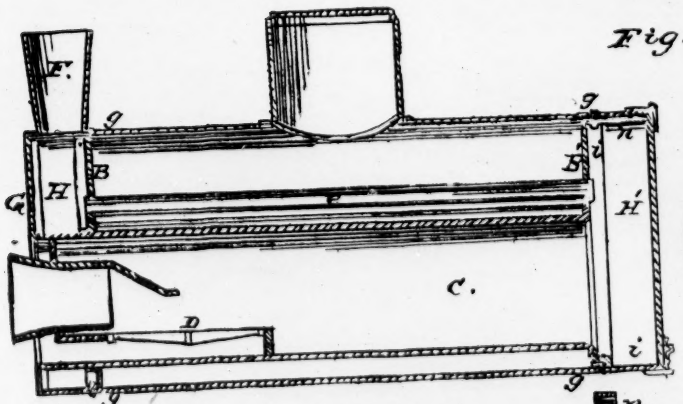


Fig. 3.

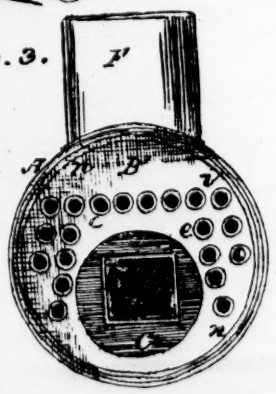
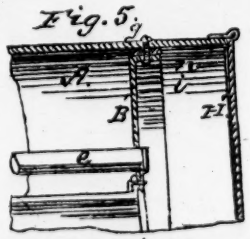


Fig. 4.

Fig. 5.



Witnesses.

John L Boone

C M Richardson.

Inventor.

Harvey Wood Rice.

By Dewey & Co

Attys.

No. 193
Heald v. Rice } Page 854.

H. W. RICE.

Steam-Boiler.

No. 6,422. Reissued May 4, 1875

Fig. 1.

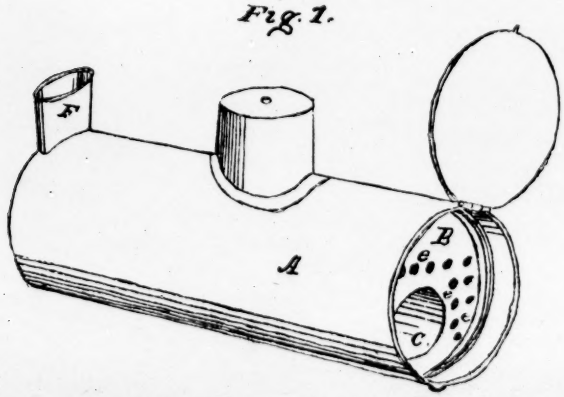


Fig. 2.

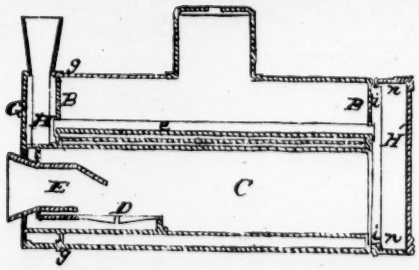


Fig. 3.

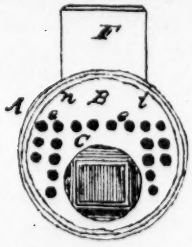


Fig. 4.

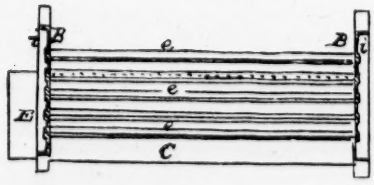
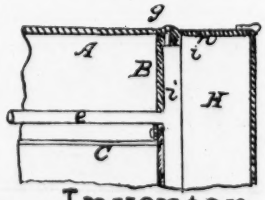


Fig. 5.



Witnesses
Geo. H. Strong.
Jno. L. Boone

Inventor
Harvey Wood Rice
by Dewey & Co
Attys

Bill
of
Exceptions
Exhibit
C.

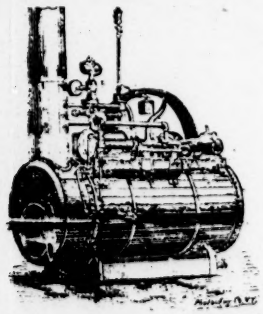
No. 193
Heald
v.
Rice

Dec'd 8/64

PAYNE & SONS'

Spark Arresting Portable Engines

MANUFACTURED AT CORNING, STEUBEN CO., N. Y.



SCRIVEN Co., Ga., Sept. 19th, 1870.

Messrs. H. W. PAYNE & SONS.

Gentlemen:—Please give me price of Twelve Horse Power Engine. I have an eight-Horse Power, bought of Payne & [illegible] in 1868. I [illegible] any engine and guide for any Engine I have seen. I can and do saw from 1 m to 1,300 feet of hard pine boards per day, with my eight-Horse Power, and it has been in use since 1868. It has had three sheds burned down over it. I saw one of your twelve Horse Power in Savannah that I would like very much. Would rather have yours than two of the Locomotive forge of [illegible]

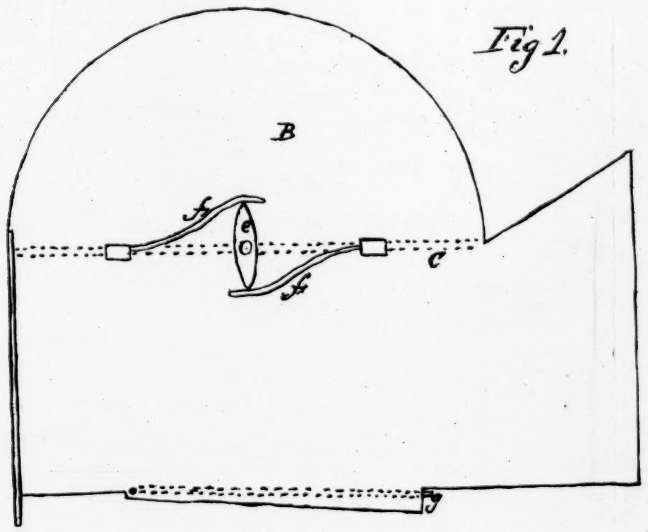
Yours &c.

D. MOREY.

Straw Feeding Attachment for Furnaces.

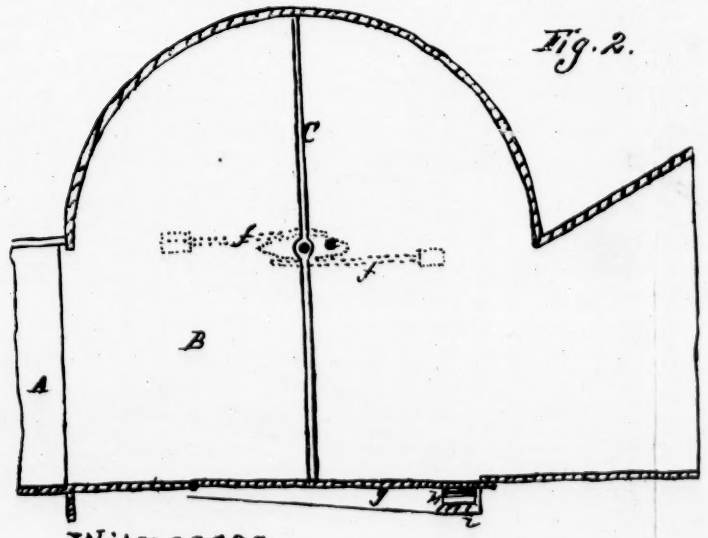
No. 135,659 Patented Feb. 11, 1873.

Fig 1.



No. 193
Heuld
v.
Rice
} Page 865

Fig. 2.



Witnesses

A. L. Boone

C. M. Richardson

David Morey
per Dewey & Co
attys

D. MOREY.

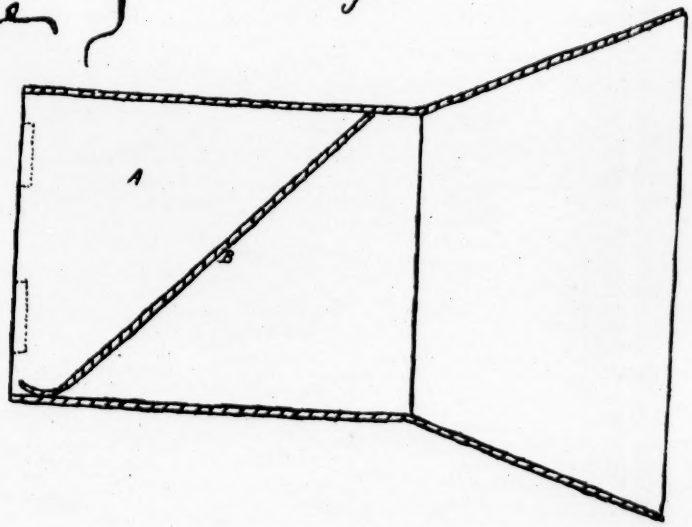
Straw Feeding-Attachments, for Furnaces.

No. 139,075.

Patented May 20, 1873

No. 193.
Heald
v.
Rice
page 872.

Fig. 1.



David Morey
per Dewey & Co
Atty's

D. MOREY

Straw-Feeding Attachment for Furnaces.

No. 6,420

Reissued May 4, 1875.

No. 193
Heald v. Rice } page 877.

Fig. 1.

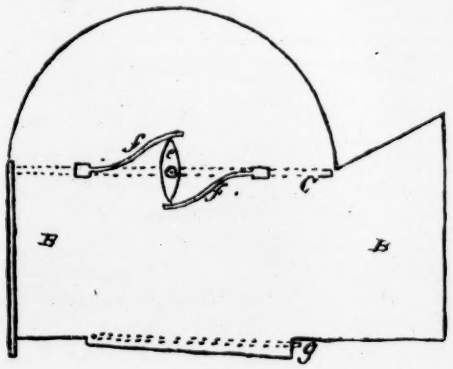
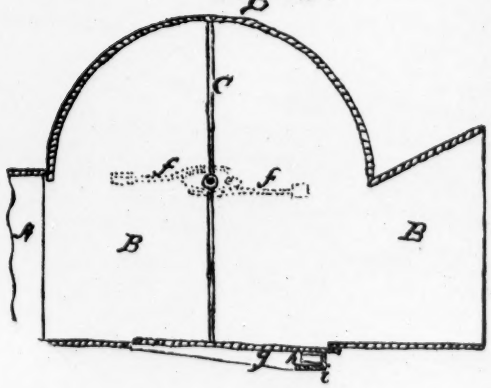
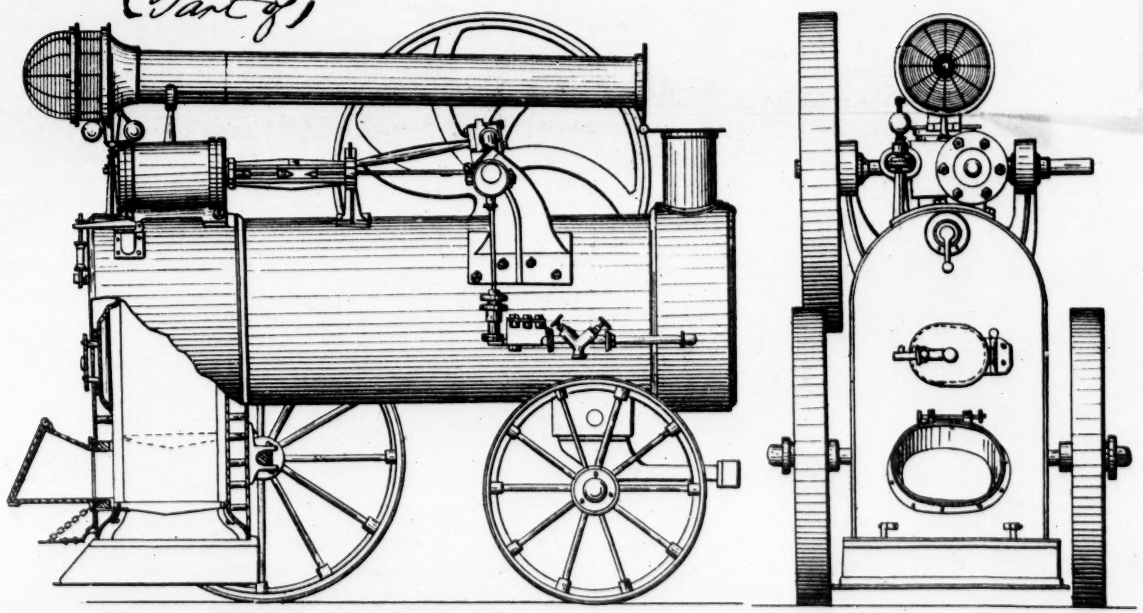


Fig. 2.



Inventor
David Morey
by Dewey & Co
Attys

Bill of Exceptions Exhibit G (Part of)



No. 193
Heald v. Rice } page 894.

J. ENRIGHT.

STEAM-BOILER FURNACE.

No. 169,531. Patented Nov. 2, 1875.

No. 193
Heald v. Rice } page 895.

Fig. 1.

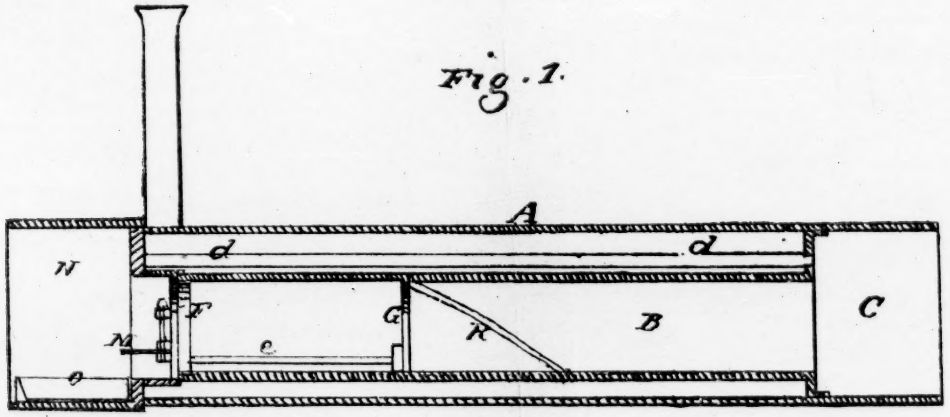
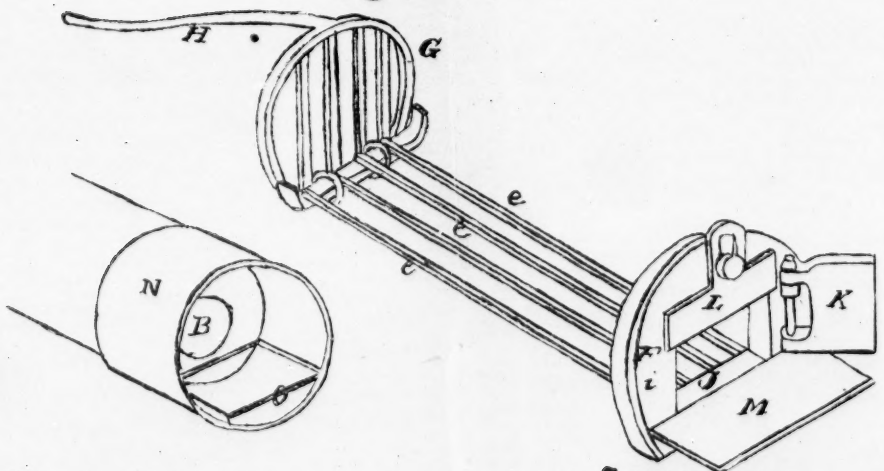


Fig. 2.



Witnesses
Geo. H. Strong
C. M. Richardson

Inventor
Joseph Enright
By his Attys
Dewey & Co

A.D. 1871, Nov. 15, N° 3084.
R.H.W. & F. GARRETT'S SPECIFICATION

No. 143.
Heald v. Rice } page 911.

(1 SHEET)

FIG. 1.

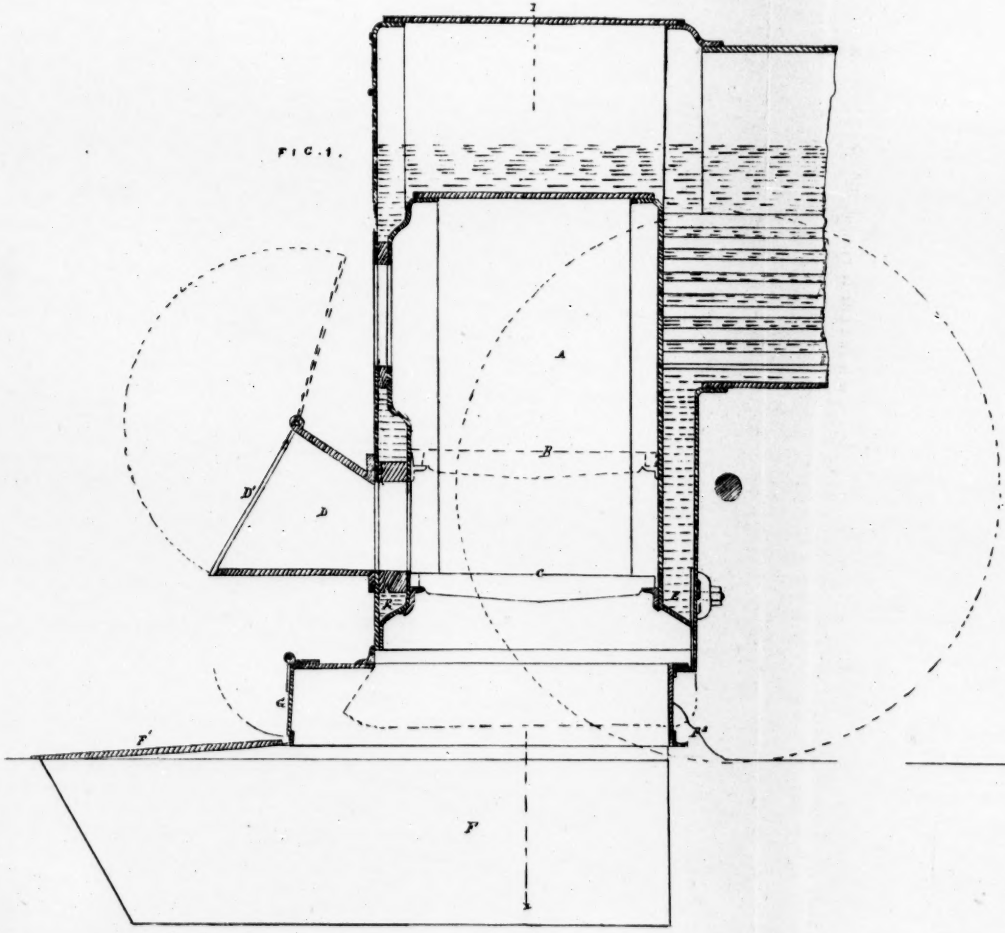
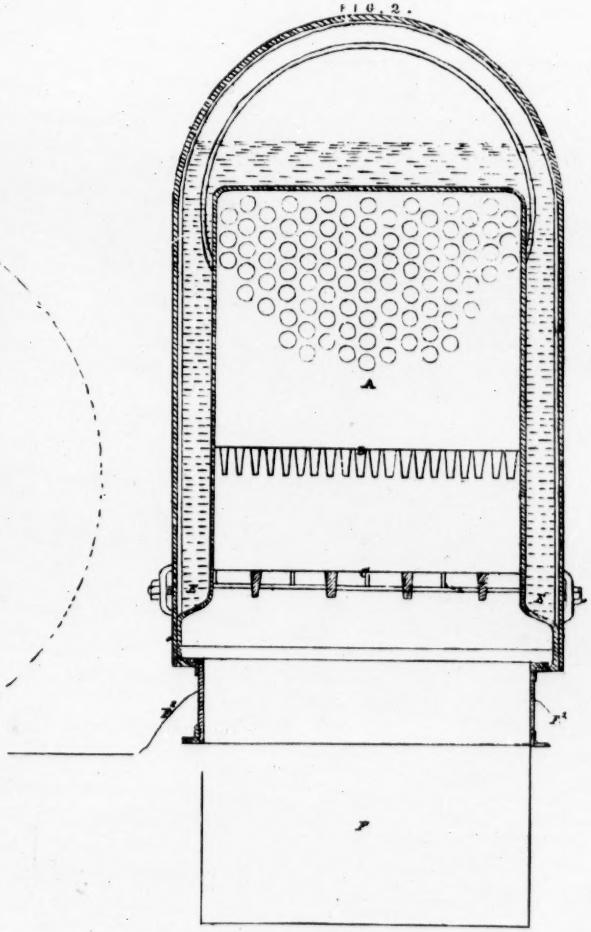


FIG. 2.



J. L. HEALD

FURNACES FOR STEAM BOILERS.

No. 179,191. Patented June 27. 1876.

No. 193 } page 925.
Heald v. Rice }

Fig. 1.

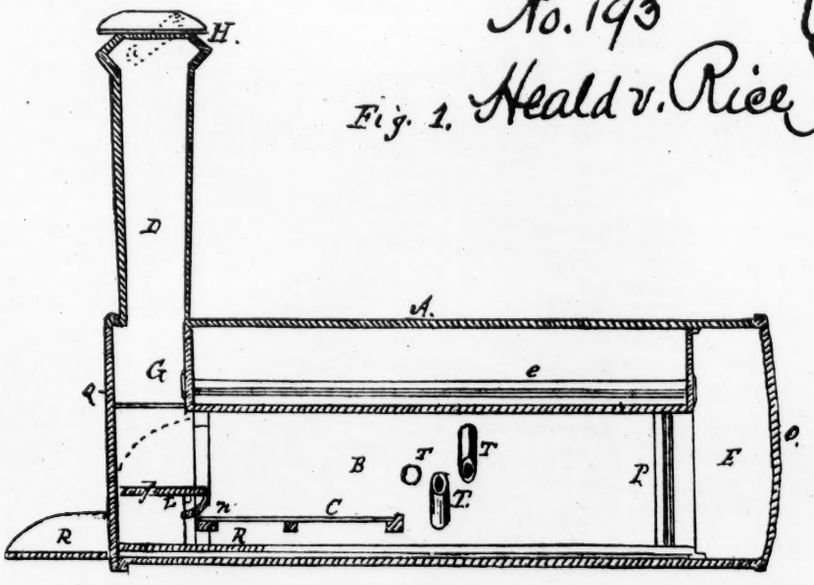


Fig. 2

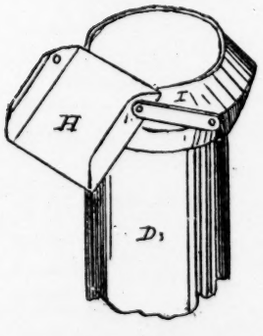


Fig. 3.

Fig. 4.

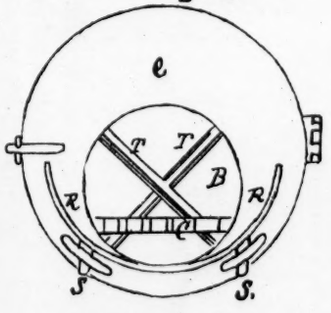
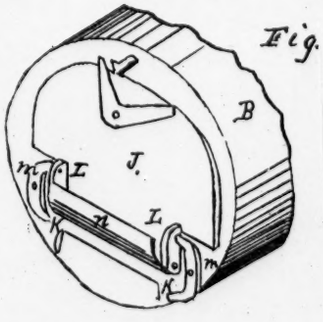


Fig. 5.



Witnesses
Geo: H. Strong
C. M. Richardson

Inventor
John L Heald

3 Sheets--Sheet 1.

C. SCHEMIOTH, dec'd.

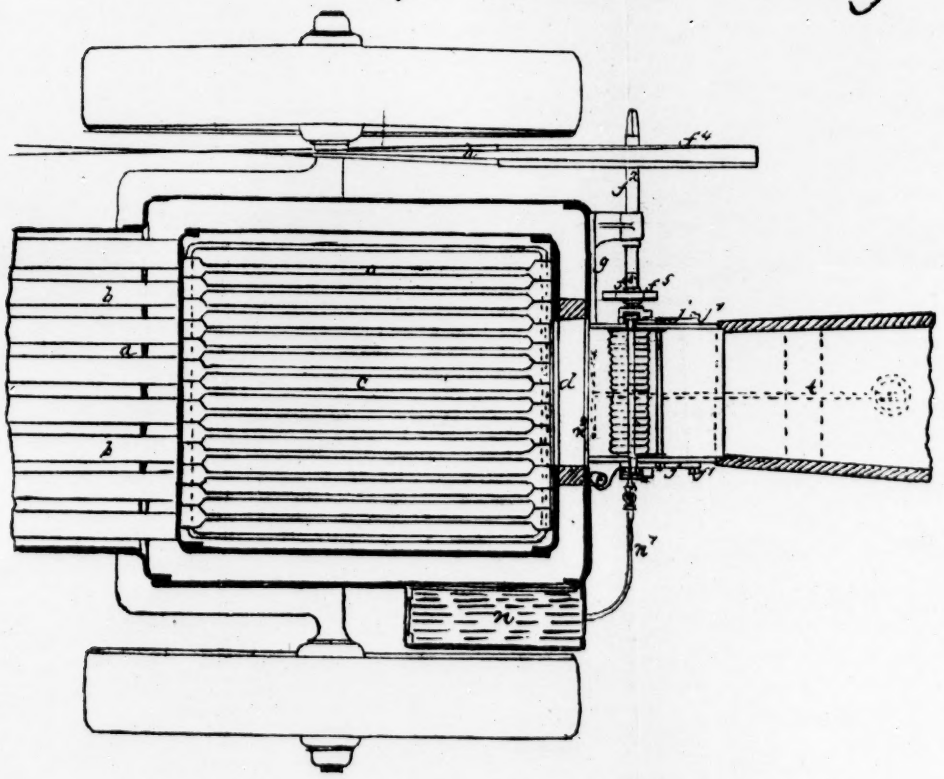
W. WESTLAKE, Adm'r.

Steam-Boiler and other Furnaces.

No. 144,241. Patented Nov. 4, 1873.

No. 193
Heald v. Rice } page 930.

Fig. 1.



Witnesses
H. L. Bennett
W. H. Isaacs

W. Westlake
Administrator of Estate of
Casimir Schemioth
by his atty
C. L. Kenrick

3 Sheets--Sheet 2.

C. SCHEMIOTH, dec'd.

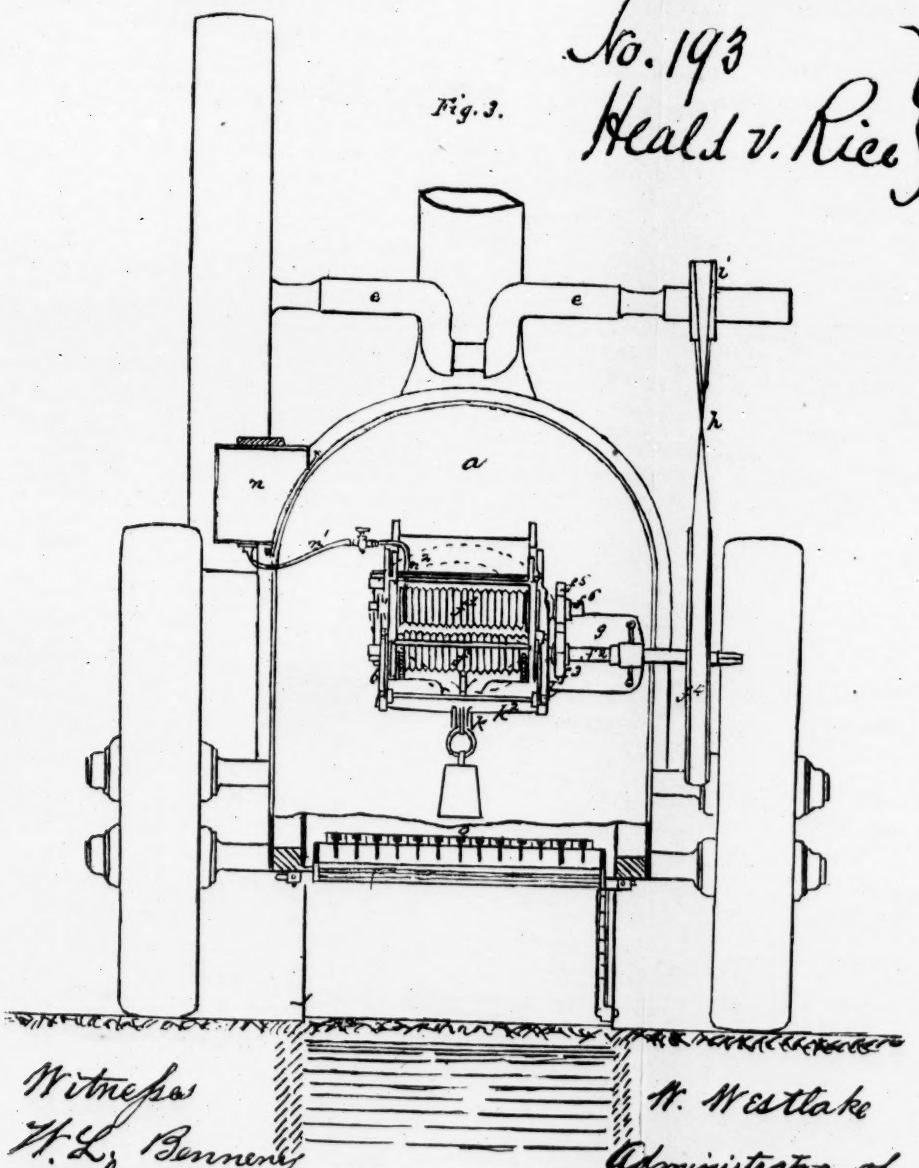
W. WESTLAKE, Adm'r.

Steam-Boiler and other Furnaces.

No. 144,241. Patented Nov. 4, 1873.

No. 193
Heald v. Rice } page 931

Fig. 3.



Witnesses
W. L. Bennett
W. H. Isaacs

W. Westlake
Administrator of
Estate of Casimir Schemioth
by his atty
D. S. Kennicky

3 Sheets--Sheet 3.

C. SCHEMIOTH, dec'd.

W. WESTLAKE, Adm'r.

Steam-Boiler and other Furnaces.

No. 144,241. Patented Nov. 4, 1873.

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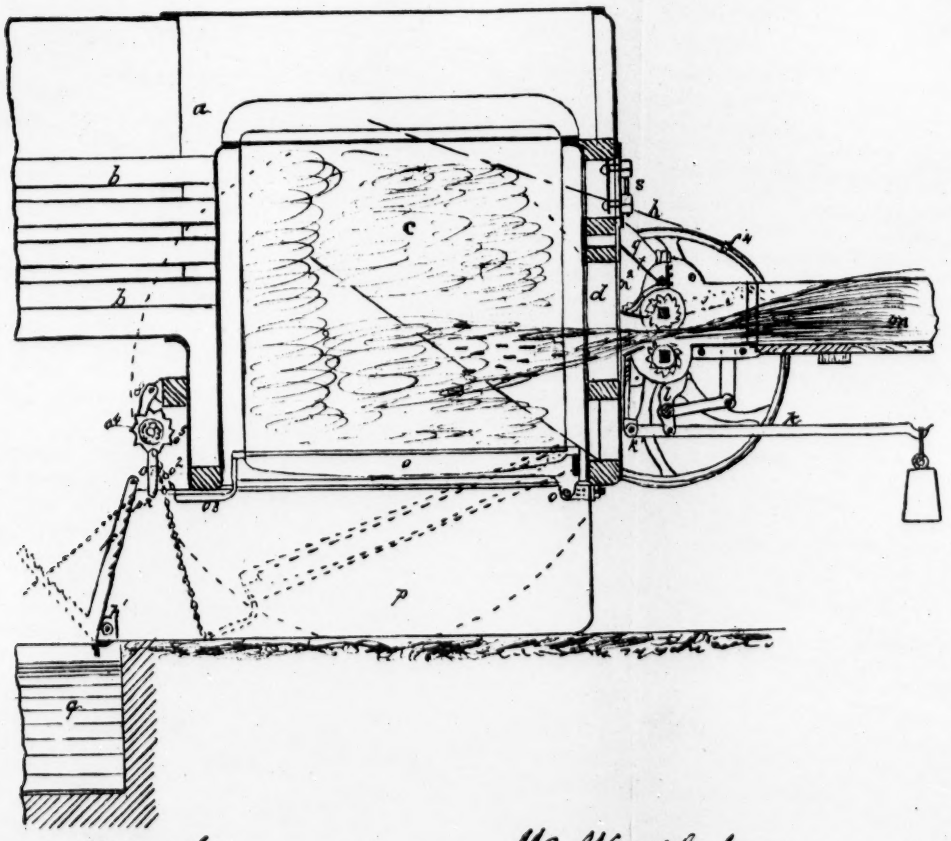
Fig. 4.



Witnesses.
H. L. Bennem
H. H. Isaacs

W. Westlake
Administrator of Estate of
Casimir Schemioth
by his att
E. L. Remrick

A.D. 1866 Aug. 30 N°2239
DAGLISH'S SPECIFICATION.

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FIG. 1.

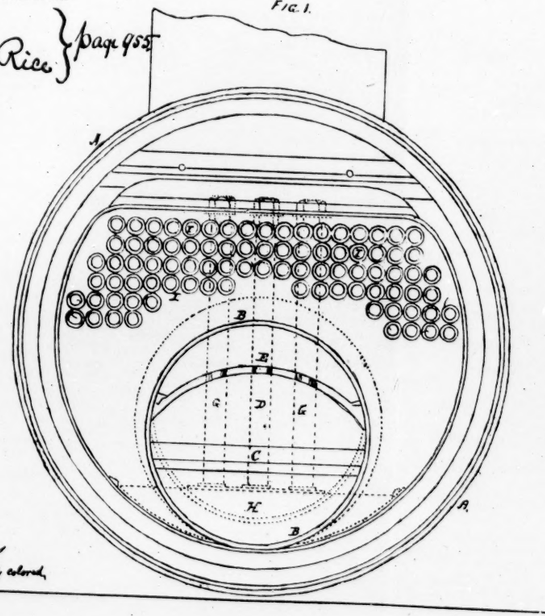
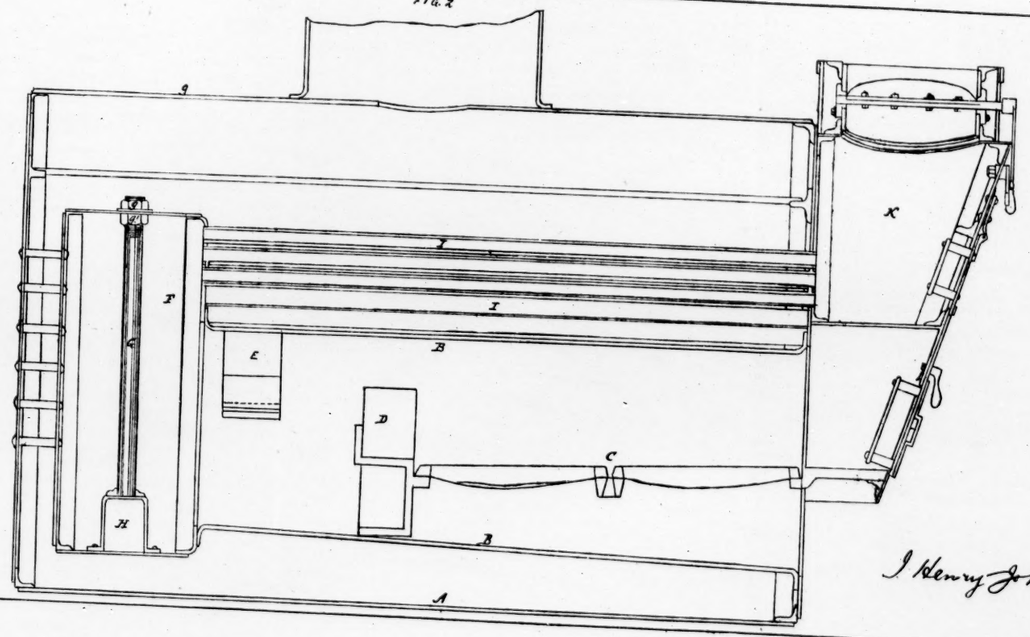


FIG. 2.



Examined
A.H. Rezler
R. Bruce

The filed drawing is partly colored.

I Henry Johnson

A D 1831 March. 4. N° 6090.
D. J. W. NAPIER'S SPECIFICATION.

FIG 1.

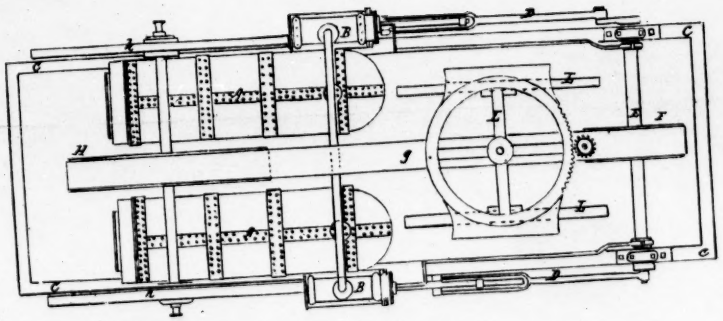


FIG. 2

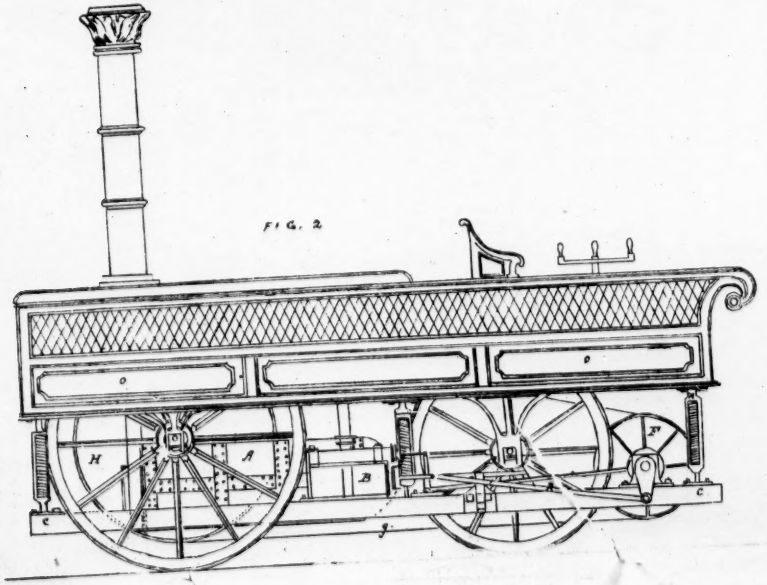


FIG. 3

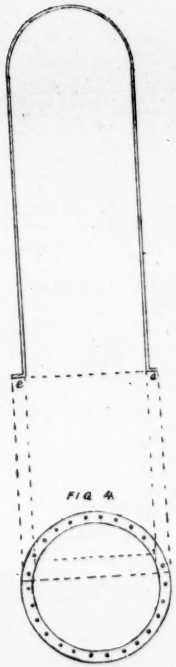


FIG. 4

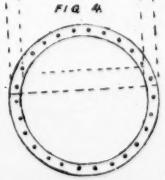


FIG. 5

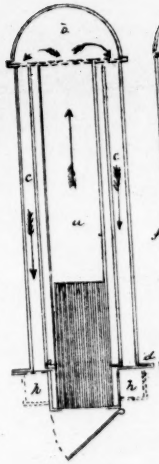


FIG 7

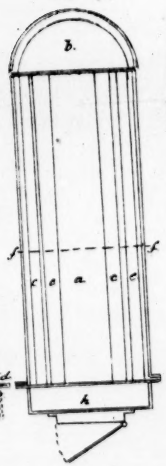


FIG. 9.

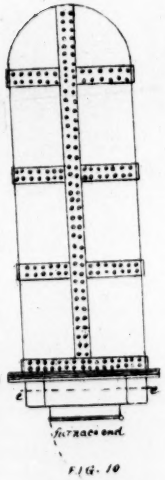


FIG 6

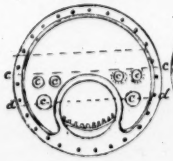


FIG 8

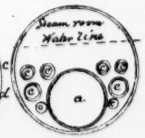


FIG. 10

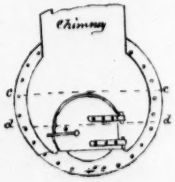


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Exhibit "A" referred to in the depositions hereto annexed.

E. A. Mills
Notary Public

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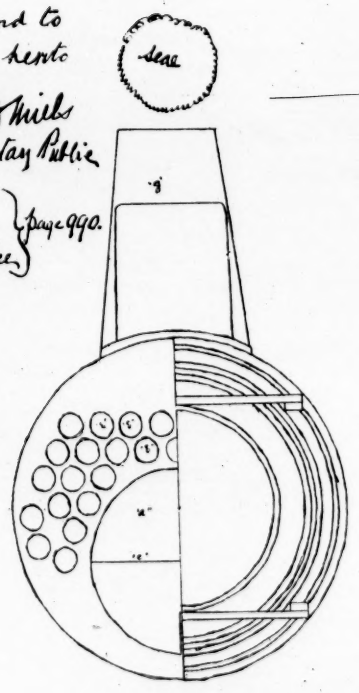
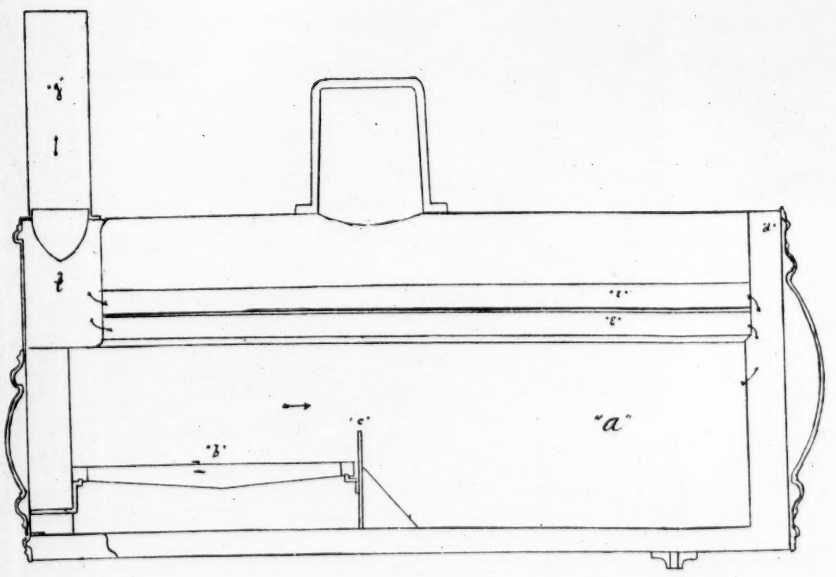
Heald v. Rice
} page 990.

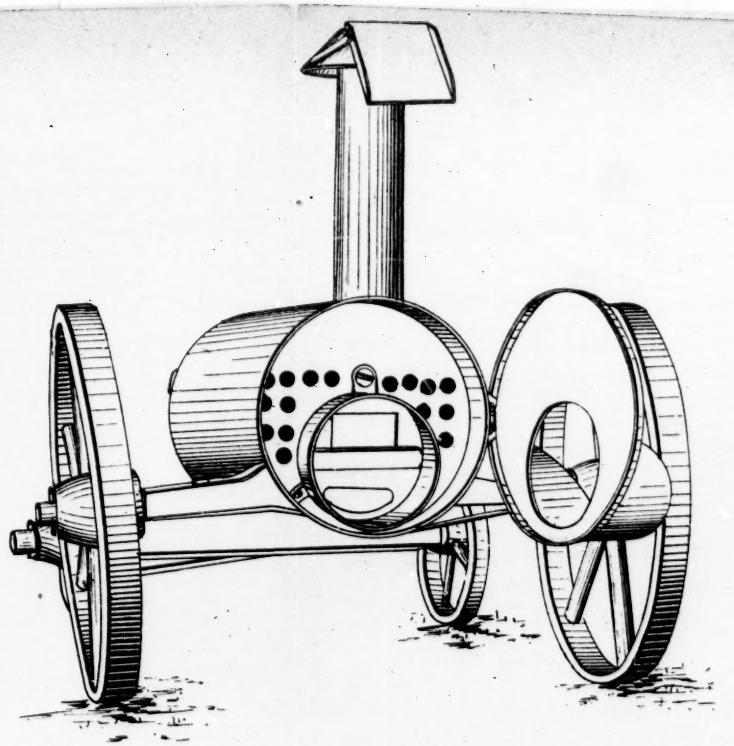


Half Section & Elevation



Longitudinal Section

Bill of Exceptions Exhibit 1.



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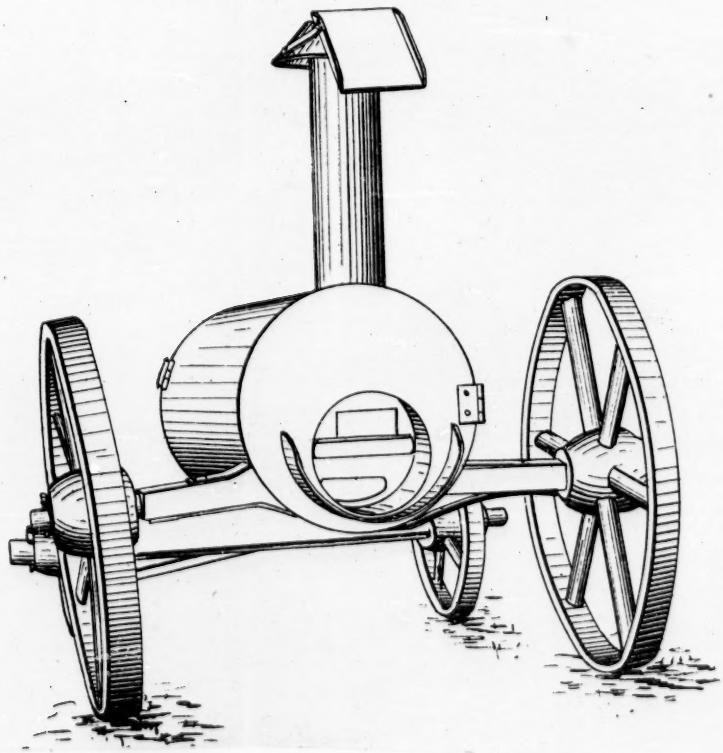
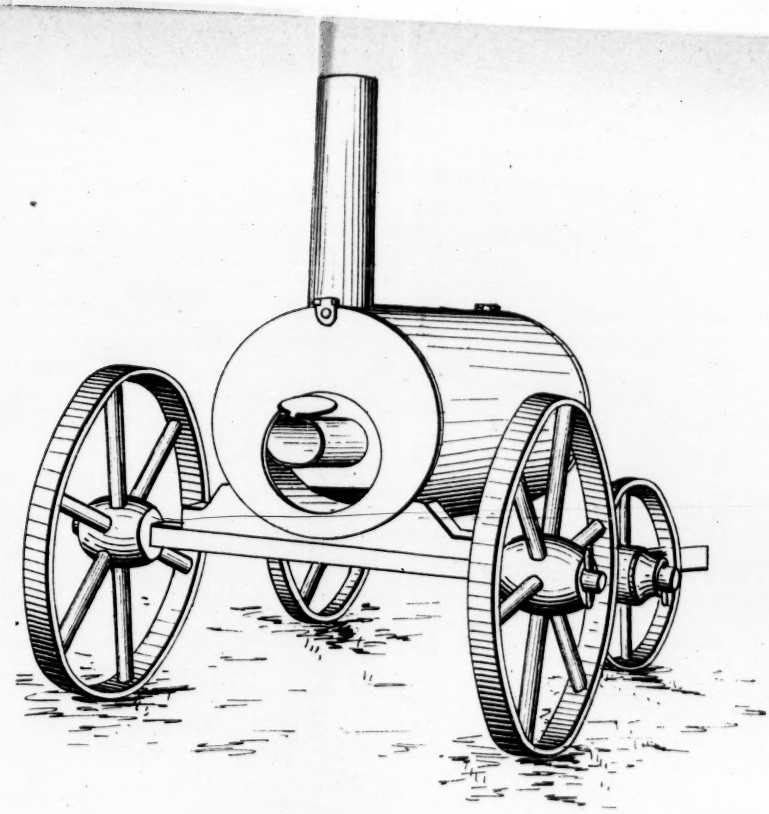


Bill of Exceptions Exhibit 2



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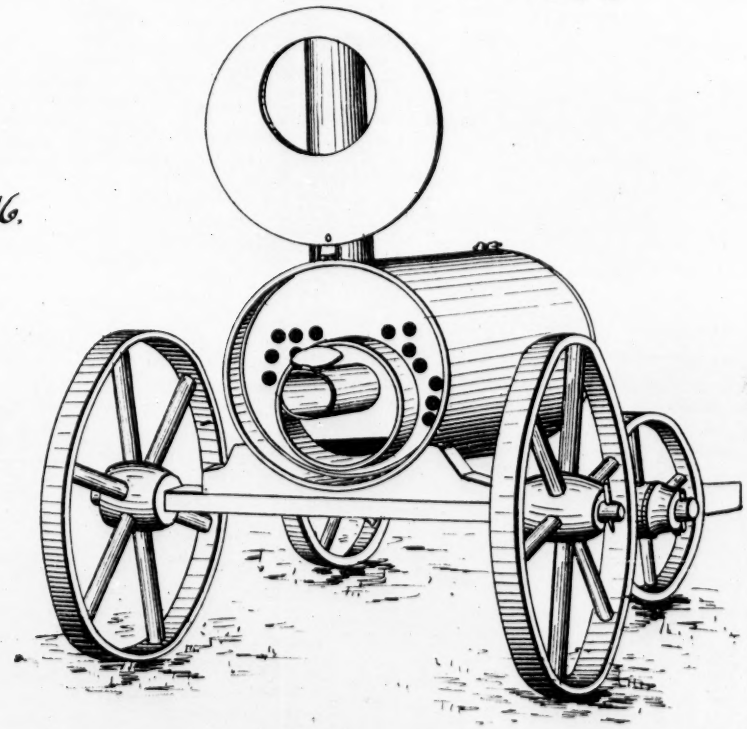
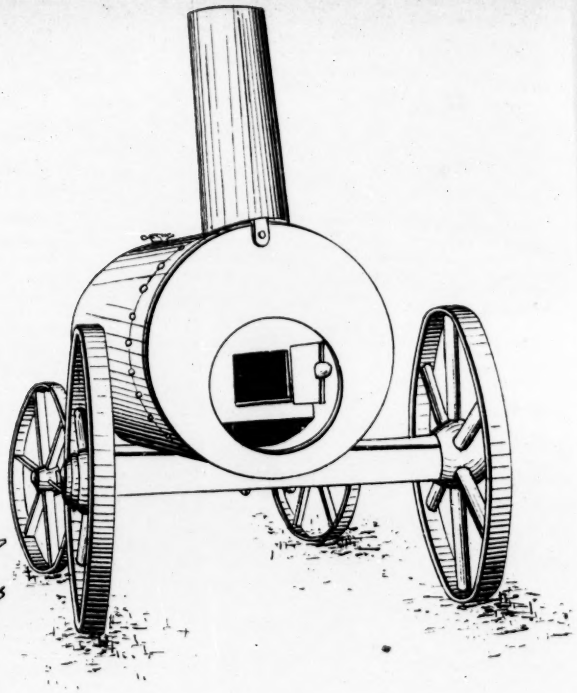


Bill of
Exceptions
Exhibit 3



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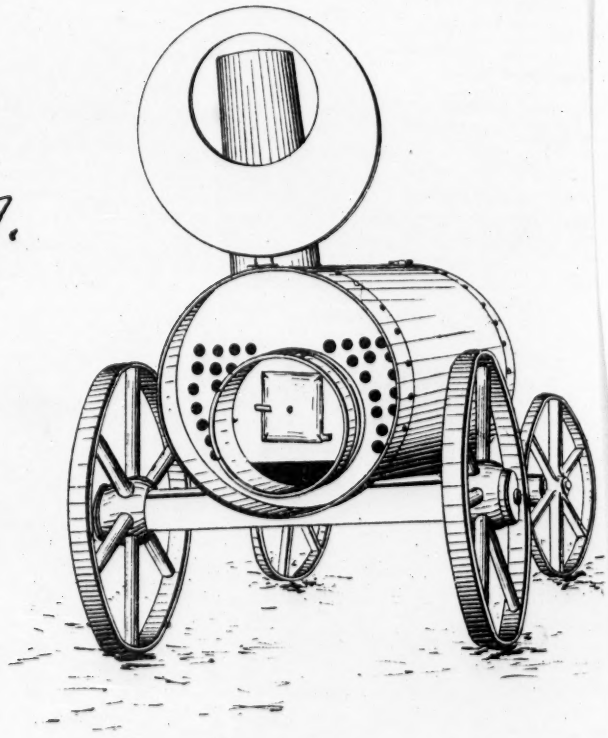
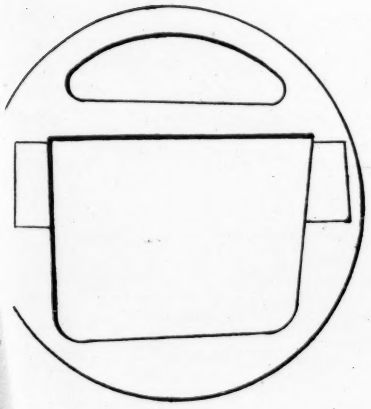
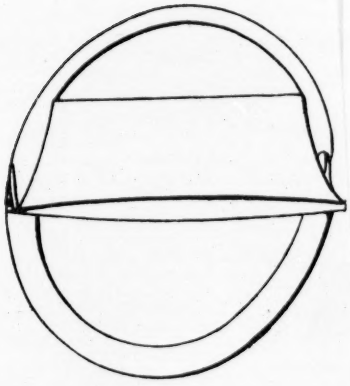
} Page 1007.







Bill
of
Exceptions
Exhibit
H.

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